

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,**

**Karnataka Real Estate Regulatory Authority,**  
# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,  
3rd Cross, Mission Road, Bengaluru-560027

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 6**

**Dated 30<sup>TH</sup> DECEMBER 2022**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/220630/0009707**

**COMPLAINANTS.....**

**DR. HARISH RAWAT &  
DR. MEENA RAWAT  
B19, ALLAHABAD BANK APARTMENTS  
MAYUR KUNJ EAST  
DELHI-110096.**

**(BY MR. AKASH R BANTIA, ADVOCATE)**

**Vs**

**RESPONDENT.....**

**OZONE URBANA INFRA DEVELOPERS  
PRIVATE LIMITED  
NO.38, ULSOOR ROAD  
BANGALORE-560042.**

**(BY MR.DEEPAK BHASKAR & ASSOCIATES  
ADVOCATES)**

**\* \* \* \* \***

1. This complaint is filed under section 31 of the RERA Act against the project  
"OZONE URBANA" for the relief of refund with interest.

**Brief facts of the complaint are as under:-**

2. The complainants had initially booked an apartment No.C103 Urbana Avenue which was later transferred to B604 in the project of the respondent under PEMI/Subvention scheme and entered into an agreement of sale on 11/02/2016 and again on 14/11/2019 on transfer of the unit from C103 to B604 and Home Loan Agreement on 19/02/2016 with Ozone and HDFC.

*Mhs*

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The complainants have paid an amount of Rs.64,71,252/- (Rupees Sixty Four Lakh Seventy One Thousand Two Hundred and Fifty two only) (including Housing Loan from HDFC) on various dates to the respondent. The respondent was supposed to handover the apartment to the complainants by the end of April 2018 with a grace period of six months i.e. latest by the end of October 2018. In the agreement of sale entered into on 14/11/2019 on transfer of the Unit from C103 to B604, the respondent has not mentioned date of possession of the apartment to the complainants, whereas it speaks about completion of the project by the end of December 2022 with a grace period of six months, whereas the RERA registration is valid till 31/12/2022 only. Despite the substantial sale consideration amount has been paid to the respondent, the respondent has failed to handover the possession of the apartment even after four years and thus failed to abide by the terms and conditions of the agreement dated 11/02/2016. Though the respondent had agreed to pay the Pre-EMIs until handing over possession of the apartment to the complainants, they did not pay PEMIs as agreed. The complainants have paid the PEMIs to the Bank. The respondent is nowhere close to handing over possession of the apartment and is not responding to give any form of compensation to the complainants. Due to this enormous delay by the respondent, the complainants have suffered mental agony and monetary losses. Thus, the complainants have approached this Authority, to direct the respondent to refund the entire amount with interest and compensation for mental agony. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel. But it has not contested the matter either by filing statement of objections or



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producing documents on its behalf. The respondent has filed a calculation sheet as on 31/8/2022 on 8/9/2022 and 28/9/2022.

4. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Home Loan Agreement, Payment receipts, Statement of Account from HDFC for having paid PEMIs, customer statement of account from Ozone dated 14/11/2019, Payment receipts, email correspondence with the respondent and memo of calculation for refund with interest as on 26/08/2022 and again on 21/09/2022.

5. Heard arguments of both sides.

**6. On the above averments, the following points would arise for my consideration:-**

1. Whether the complainants are entitled for the relief claimed?
2. What order?

**7. My answer to the above points are as under:-**

1. In the Affirmative.
2. As per final order for the following

**REASONS**

8. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale and construction to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project, and has not handed over the unit in favour of complainants till date and not paid PEMIs to HDFC. The PEMIs have been paid by the complainants. Hence, the builder has failed to abide by the terms of the agreement for sale dated 11/02/2016. There seems to be no possibility of completing the project or handing over the possession in near future.



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9. As per section 18(1) of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.
10. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid substantial sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of the apartment and not paying PEMIs certainly entitles the complainants herein for refund with interest. The Authority has also noticed that the agreement of sale dated 14/11/2019 after C103 to B604, there is no mention of date of handing over of the unit to the complainants, whereas it has been mentioned that the project completion date is December 2022 with a grace period of six months, which is not acceptable as the completion date for the project as per RERA registration is 31/12/2022 and the question of grace period does not arise. It is completely an attempt to mislead the Authority.
12. The complainants have filed their memo of calculation as on 19/7/2022 claiming an amount of Rs.1,19,89,635/- as refund with interest. There was difference in the principal amount paid by the complainants to the respondent in the calculation sheet as on 31/8/2022 submitted to the Authority on 8/9/2022. The Authority directed both the parties to reconcile and submit fresh memo of calculation. Accordingly, the complainants

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have submitted fresh memo of calculation on 3/10/2022 claiming an amount of Rs.1,16,50,431/- as on 21/9/2022 with supporting documents on their behalf and the respondent submitted its calculation sheet as on 31/8/2022 before the Authority during the hearing on 28/9/2022. Though the principal amount tallied, there was difference in the calculation of interest. A thorough verification of the documentary evidence submitted by the complainants reveal that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted vide their memo of calculation as on 21/09/2022.

13. Further, the complainants have sought compensation for mental agony which does not come under the jurisdiction of this Authority and hence, same cannot be considered.

14. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under –

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	26-11-2015	1,00,000	521	30-04-2017	12,846
2	08-01-2016	5,67,139	478	30-04-2017	66,844
3	23-02-2016	25,11,310	432	30-04-2017	2,67,506
4	23-02-2016	4,92,094	432	30-04-2017	52,418
5	14-06-2016	8,61,884	320	30-04-2017	68,006
6	14-06-2016	1,38,825	320	30-04-2017	10,953
7	16-09-2016	5,00,000	226	30-04-2017	27,863
8	22-09-2016	5,00,000	220	30-04-2017	27,123
9	08-11-2016	5,00,000	173	30-04-2017	21,328
10	10-02-2017	3,00,000	79	30-04-2017	5,843
11				TOTAL INTEREST ( I1 )	5,60,730

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Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	64,71,252	1969	21-09-2022	8.15	10.15 as on 01-05-2017	35,43,294
2	05-07-2019	33,535	1174	21-09-2022	8.65	10.65 as on 10-06-2019	11,487
3	05-08-2019	33,535	1143	21-09-2022	8.6	10.6 as on 10-07-2019	11,131
4	05-09-2019	33,535	1112	21-09-2022	8.45	10.45 as on 10-08-2019	10,676
5	05-10-2019	33,201	1082	21-09-2022	8.35	10.35 as on 10-09-2019	10,186
6	05-11-2019	33,201	1051	21-09-2022	8.25	10.25 as on 10-10-2019	9,799
7	08-11-2019	50,000	1048	21-09-2022	8.25	10.25 as on 10-10-2019	14,715
8	05-12-2019	33,201	1021	21-09-2022	8.2	10.2 as on 10-11-2019	9,472
9	06-01-2020	32,868	989	21-09-2022	8.2	10.2 as on 10-12-2019	9,083
10	05-02-2020	32,868	959	21-09-2022	8.2	10.2 as on 10-01-2020	8,808
11	05-03-2020	32,868	930	21-09-2022	8.15	10.15 as on 10-02-2020	8,500
12	08-04-2020	32,701	896	21-09-2022	8.05	10.05 as on 10-03-2020	8,067
13	05-05-2020	32,701	869	21-09-2022	7.7	9.7 as on 10-04-2020	7,551

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14	05-06-2020	32,701	838	21-09-2022	7.55	9.55 as on 10-05-2020	7,169
15	06-07-2020	32,033	807	21-09-2022	7.3	9.3 as on 10-06-2020	6,586
16	05-08-2020	32,033	777	21-09-2022	7.3	9.3 as on 10-07-2020	6,341
17	05-09-2020	32,033	746	21-09-2022	7.3	9.3 as on 10-08-2020	6,088
18	05-10-2020	31,366	716	21-09-2022	7.3	9.3 as on 10-09-2020	5,722
19	05-11-2020	31,366	685	21-09-2022	7.3	9.3 as on 10-10-2020	5,474
20	05-12-2020	27,317	655	21-09-2022	7.3	9.3 as on 10-11-2020	4,558
21	05-01-2021	31,032	624	21-09-2022	7.3	9.3 as on 10-12-2020	4,933
22	05-02-2021	31,032	593	21-09-2022	7.3	9.3 as on 10-01-2021	4,688
23	05-03-2021	31,032	565	21-09-2022	7.3	9.3 as on 10-02-2021	4,467
24	05-04-2021	31,032	534	21-09-2022	7.3	9.3 as on 10-03-2021	4,222
25	05-05-2021	31,032	504	21-09-2022	7.3	9.3 as on 10-04-2021	3,985
26	05-06-2021	31,032	473	21-09-2022	7.3	9.3 as on 15-05-2021	3,739
27	05-07-2021	30,865	443	21-09-2022	7.3	9.3 as on 15-06-2021	3,483
28	05-08-2021	30,865	412	21-09-2022	7.3	9.3 as on 15-07-2021	3,240

APW



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29	TOTAL AMOUNT	73,52,237				TOTAL INTEREST ( I2 )	37,37,464
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Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 21-09-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
73,52,237	42,98,194	0	1,16,50,431

15. Accordingly the point raised above is answered in the Affirmative.

16. **My answer to point No.2:-** In view of the above discussion, I proceed to pass the following

## ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.**CMP/220630/0009707** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,16,50,431/- (Rupees One Crore Sixteen Lakh Fifty Thousand Four Hundred and Thirty One only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 26/11/2015 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 21/09/2022. The interest due from 22/09/2022 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

  
(Neelmani N Raju)  
Member, K-RERA